IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4284 OF 2006

Jignesh Rajendra Bhatt .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Subhash Jha i/b. Law Global for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th December 2006.

P.C.

. This application was mentioned in this Court as the anticipatory bail was denied by the Additional Sessions Judge, Mumbai.

2. The order passed on 29th November 2006 reads thus:-

> "1. The application is tendered across the bar by Mr.Jha. He submits that the urgency is that an anticipatory bail application is rejected today by the learned Additional Sessions Judge, Mumbai but a copy of the order is not made available. Even the operative order is not available. However, the order is pronounced in the Court today and the applicant apprehends that he would be arrested.
>
> 2. Mr.Jha therefore tendered this application and applies for urgent ad-interim order without notice to the P.P.

> 3. In the light of the apprehension expressed by Mr.Jha, the applicant is at liberty to mention the matter after completion of all office procedures tomorrow i.e. 30th November 2006 at 3.00 p.m. Till tomorrow i.e. 30th November 2006 applicant shall not be arrested.
>
> 4. Applicant had applied for continuation of the interim anticipatory bail, the trial court having rejected the same, this order has been passed.
>
> 5. The applicant be provided with an ordinary copy of this order duly authenticated."

3. Grievance of Mr.Jha is that the order dated 29th November 2006 was passed at 3.00 p.m. and it was passed in the circumstances noted by this Court. While it is true that notice could

not be served upon the P.P. of the application made by the applicant, yet, this Court had protected the applicant till 30th November 2006. The grievance of Mr.Jha is that the order passed by this Court was communicated orally to the I.O. but the I.O. proceeded to arrest the applicant. In other words, despite communication of an order directing not to arrest the applicant, he has been arrested by the I.O. Investigating Officer is, therefore trying to over-reach this Court and he should be dealt with properly.

4. In the light of the fact that the applicant was arrested prior to the communication of this order, all that remains to be considered is whether the communication was made prior to the arrest or thereafter.

5. When this matter was placed before me earlier, the I.O. concerned was present. He orally denied of having received any

communication and that too on his mobile number from the Advocate appearing for the applicant. He sought to controvert the contents of the affidavit of the wife of the applicant orally.

6. I had noted the shifting standing of the I.O. and his demeanour in court. I had, therefore, orally directed Mr.Pednekar, A.P.P. to take instructions as to whether this I.O. should be entrusted with the investigation of this case any further. Today, after taking instructions from the concerned Authorities, Mr.Pednekar states that the investigation shall now be handled by A.P.I. Ghosalkar, attached to Bandra Police Station and the present I.O. shall be released of this assignment forthwith.

7. Further, the affidavit is filed by concerned I.O. and paras 2 and 3 of the same read thus:-

"2. I say that the applicant accused had filed Anticipatory bail application No.1368 of 2006 before Hon'ble Sessions Court for Greater Mumbai. After hearing both the sides, the learned Sessions Judge was pleased to reject the same on 29th/11/2006 at 1.45 p.m. The learned Sessions Judge was pleased to refuse the request made by the Counsel for the applicant for extension of interim relief.

3. I say that at about 2.00 p.m., I have picked up the present applicant from Oval ground near City Civil & Sessions Court. I have took him to Bandra Police Station by private taxi. Thereafter, at about 3.00 p.m. he was arrested under the above mentioned C.R. I have informed the applicant's wife about his arrest on her mobile phone. I have arrested the

> applicant by following guidelines given by the Supreme Court. I have made entry to that effect in Station Diary and police lock up register."

8. In my view, it would not be proper to enter into any factual controversy. Once the station diary entry is also produced along with time, then, in my view, it is not necessary to probe the matter any further. In the peculiar facts brought to my notice, I am accepting the contents of affidavit filed by the I.O. on 8th December 2006.

9. Since, the applicant has already been arrested, this application for anticipatory bail is rendered infructuous. The same is, therefore, dismissed as infructuous. However, this order does not prevent the applicant from applying for regular bail and all contentions of both sides are expressly kept open.

(S.C.Dharmadhikari, J)